

**Appl. No.** : 10/671,179  
**Filed** : September 25, 2003

### **REMARKS**

The Applicants thank the Examiner for her careful and thoughtful examination of the present application. By way of summary, Claims 2-20 were pending in this application. In the present amendment, the Applicants have amended Claims 2-4, 13-15 and 17. Accordingly, Claims 2-20 remain pending for consideration.

#### **Allowable Subject Matter - Claims 8-10 and 18**

The Applicants also thank the Examiner for the indication of allowable subject matter in Claims 8-10 and 18.

#### **Examiner's Statement of Reasons for Allowance**

The Applicants respectfully disagree with the Examiner's Statement of Reasons for Allowance to the extent that not all the claims include each of the structures or method steps recited in the Examiner's Statement. Also, the Applicants respectfully disagree with the Examiner's Statement to the extent that there is any implication that the patentability of any claim rests on the recitation of a single feature because it is the combination of features recited in each claim that makes that claim patentable.

#### **Rejection Of Claims 2-7, 11-17, 19 and 20 Under 35 U.S.C. § 102**

The Office Action rejected Claims 2-7, 11-17, 19 and 20 under 35 U.S.C. § 102 as being anticipated by U.S. patent no. 5,190,039, issued to Takeuchi et al., (the Takeuchi patent). The Applicants respectfully traverse this rejection because the Takeuchi patent fails to identically teach every element of Claims 2-7, 11-17, 19 and 20. See M.P.E.P. § 2131 (stating that in order to anticipate a claim, a prior art reference must identically teach every element of the claim).

#### **Claims 2, 3, 13- 16, 19 and 20**

Independent Claims 2 and 3 include the limitation of determining a relationship between a blood constituent, a biological property and a compensated measurement of said blood constituent. Takeuchi discloses determining an oxygen partial pressure measurement from an oxygen saturation measurement, a pH measurement, and a temperature measurement. Takeuchi, col. 4, lines 45-56. Oxygen partial pressure is not a blood constituent. Thus, Takeuchi does not teach the claimed limitations of Claims 2 and 3.

Claims 13-16 and 19 which depend from Claim 2, are believed to be patentable for the same reasons articulated above with respect to Claim 2, and because of the additional features

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recited therein. Claim 20 which depends from Claim 3, is believed to be patentable for the same reasons articulated above with respect to Claim 3, and because of the additional features recited therein.

**Claims 4-7, 11 and 17**

Independent Claims 4 and 17 include the limitations of a primary input in communication with a first device configured to measure a first physiological property and a processor configured to output a compensated measurement of the first physiological property. Takeuchi discloses devices for measuring oxygen saturation, pH and temperature but does not disclose outputting a compensated measurement of oxygen saturation, pH and temperature. Takeuchi, Figure 1. Rather, Takeuchi discloses determining a value for oxygen partial pressure but does not disclose a device configured to measure oxygen partial pressure. Thus, Takeuchi does not teach the claimed limitations of Claims 4 and 17.

Claims 5-7 which depend from Claim 4, are believed to be patentable for the same reasons articulated above with respect to Claim 4, and because of the additional features recited therein.

**Request For Telephone Interview**

In view of the forgoing, the present application is believed to be in condition for allowance, and such allowance is respectfully requested. If further issues remain to be resolved, the Applicants' undersigned attorney of record hereby formally requests a telephone interview with the Examiner. The Applicants' attorney can be reached at (949) 721-2923 or at the number listed below.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

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Respectfully submitted,

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Dated: 2/27/07

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